

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TELEBUYER, LLC,

Plaintiff,

v.

AMAZON.COM, INC., AMAZON WEB  
SERVICES LLC, and VADATA, INC.,

Defendants.

AMAZON.COM, INC., AMAZON WEB  
SERVICES LLC, and VADATA, INC.,

Counterclaimants,

v.

TELEBUYER, LLC,

Counterclaim-  
Defendant.

Case No. 2:13-cv-01677-BJR

**MOTION FOR SUMMARY  
JUDGMENT OF INVALIDITY**

**Note on Motion Calendar:**  
May 4, 2015

**ORAL ARGUMENT REQUESTED**

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## INTRODUCTION

Amazon's *Markman* briefing argued that Telebuyer's patents violate the more than 150 year-old rule against claiming naked functions—that is, claiming inventions by what they *achieve* as opposed to what they *are*. Again, Telebuyer's patents disclose no computing hardware that, without highly specialized and extremely sophisticated programming, would perform the catalog of complex e-commerce functions achieved by Telebuyer's "groundbreaking" and "revolutionary" traffic control system. And again, Telebuyer's patents disclose no specialized programming, system logic, or algorithms that would transform otherwise generic hardware into something groundbreaking and revolutionary. Those defects are now fully briefed, are incorporated herein by reference, and constitute the first ground for this motion.

The second ground for this motion arises out of Telebuyer's response to those briefs. Telebuyer's response never argued (understandably) that its patents disclose any computing hardware that, without specialized programming, would perform the complex functions achieved by Telebuyer's traffic control system. Nor did Telebuyer's response argue (again, understandably) that its patents somehow disclose specialized programming, system logic, or software algorithms that would cause otherwise generic hardware to perform those functions. Instead—and this is important—Telebuyer argued that its "groundbreaking" and "revolutionary" traffic control system is comprised solely of generic computing devices (*e.g.*, controllers, processors, memories, video cameras, *etc.*) performing generic and inherent computing functions, and that these generic computing devices would have been well known (*i.e.*, identifiable) to persons of skill at the time of the original patent application. In other words, Telebuyer now argues that a person of skill would know what its traffic control system *is*, not just what it *achieves*, by reference to these generic computing devices performing their generic and inherent functions. But that is not a square on which Telebuyer may safely place its king. To the contrary, that square is tightly controlled by yet another 150 year-old cornerstone of American patent law—the prohibition against owning naked ideas disembodied from actual inventions.

The rule against owning disembodied ideas is a judicial interpretation of 35 U.S.C. § 101,

1 which prevents a patentee from owning laws of nature, natural phenomena, and abstract ideas,  
 2 including fundamental economic practices long prevalent in our system of commerce. In the  
 3 modern computer age, claiming to own a fundamental economic practice running on generic  
 4 computers performing generic functions is not inventive—it is, in effect, no different than claim-  
 5 ing to own the economic practice itself. And so, when Telebuyer’s generic computing devices  
 6 are stripped of all inventive weight—as they must under an unbroken chain of recent Supreme  
 7 Court and Federal Circuit precedent—Telebuyer’s claims devolve into nothing more than the  
 8 fundamental economic practice of facilitating commerce by connecting buyers and sellers. That  
 9 fundamental economic practice is not an invention. It may never be owned by anyone. And any  
 10 attempt to do so is invalid under our patent laws.

11       These two cornerstone rules—the rule against owning naked functions and the rule  
 12 against owning naked ideas—are closely interrelated wherever, as here, patents are both ambi-  
 13 tious in scope and technologically vacuous. These patents simply describe a problem, announce  
 14 purely functional and generic steps that purport to solve that problem, and recite standard com-  
 15 puter operations to perform those steps without any “inventive concept” or something “signifi-  
 16 cantly more” than an idea or an objective. As Federal Circuit Judge Bryson recently explained  
 17 (sitting by designation in a district court case involving patents no less ambitious, argotic, and  
 18 anemic), the problem is that such patents contribute nothing to the public store of knowledge  
 19 even while depriving the public of the benefits of true invention performed by others at a later  
 20 date.

21               [S]uch patents, although frequently dressed up in the argot  
 22 of invention, simply describe a problem, announce purely func-  
 23 tional steps that purport to solve the problem, and recite standard  
 24 computer operations to perform some of those steps. The principal  
 25 flaw in these patents is that they do not contain an “inventive con-  
 26 cept” that solves practical problems and ensures that the patent is  
 27 directed to something “significantly more than” the ineligible ab-  
 stract idea itself. As such, they represent little more than function-  
 al descriptions of objectives, rather than inventive solutions. In  
 addition, because they describe the claimed methods in functional  
 terms, they preempt any subsequent specific solutions to the prob-  
 lem at issue.

1 *Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, --- F. Supp. 2d ----, No. 2:13-CV-655, 2014  
 2 WL 4364848, at \*13 (E.D. Tex. Sept. 3, 2014) (granting summary judgment of invalidity under  
 3 § 101) (quoting *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355, 2357 (2014)).

4 Those words could have been written for this case. Applying that reasoning here, togeth-  
 5 er with the reasoning set forth in Amazon's *Markman* briefs and in this brief, Amazon respectf-  
 6 ly moves for summary judgment that the asserted claims of Telebuyer's patents are invalid as a  
 7 matter of law.

### 8 **PROCEDURAL HISTORY**

9 On July 22, 2013, Telebuyer sued Amazon.com, Inc., Amazon Web Services LLC, and  
 10 VADATA, Inc. (collectively, "Amazon") in the United States District Court for the Eastern Dis-  
 11 trict of Virginia, alleging infringement of seven United States Patents comprising nearly 800  
 12 claims relating generally to electronic commerce. (D.I. 86 at 11.) On September 13, 2013, the  
 13 Eastern District of Virginia transferred the case to this Court. (D.I. 49 at 1.) On October 16,  
 14 2014, the Court ordered Telebuyer to limit the number of asserted claims to 32. (D.I. 165.) On  
 15 October 13, 2014, the parties concluded briefing on claim construction, which included Ama-  
 16 zon's arguments about impermissible functional claiming. (D.I. 152-55, 161-64.)

17 On December 17, 2014, the Court conducted a technology tutorial hearing directed to the  
 18 disclosures in Telebuyer's patents and the 27 separate Amazon technologies that Telebuyer ac-  
 19 cuses of infringement. (D.I. 191, Tutorial Hr'g Tr. 47:17-22, Dec. 17, 2014.) At the end of the  
 20 hearing, the Court proposed staying further claim construction proceedings pending a decision  
 21 on the problem of functional claiming, which Telebuyer's counsel agreed is "a threshold issue."  
 22 (*Id.* at 70:1-3 ("It's a threshold issue. If Amazon is right, it's outcome determinative and the case  
 23 goes on its way."); *see also id.* at 76:2-6 ("[THE COURT:] Because if it's indefinite ... in some  
 24 way that doesn't have structure or algorithms or whatever it needs, that's the end of the case, as  
 25 far as I see it.")). The Court also raised, *sua sponte*, whether Telebuyer's patents suffer from ad-  
 26 ditional defects under 35 U.S.C. § 101 as construed by "cases like *Bilski* and *Alice*," which, in  
 27 the Court's view, "must be dealt with at some point." (*Id.* at 72:8-12.) As the Court correctly

observed, the problem of functional claiming and the problem of patent eligibility “overlap” like “two sides of the same coin,” and thus the Court “should deal with it all at once.” (*Id.* at 73:11-22.) The Court granted Amazon leave to move for summary judgment on both grounds, ordering supplemental briefing limited to 35 U.S.C. § 101.

This is Amazon’s motion for summary judgment on both grounds and its opening brief under 35 U.S.C. § 101.

## STATEMENT OF UNDISPUTED FACTS

### A. The Parties

Telebuyer is a California limited liability company formed by Ronald A. Katz. (*See* D.I. 1; D.I. 145 at 1-2.) Amazon.com, Inc. is the world’s leading online retailer with its headquarters in Seattle, Washington. (*See* D.I. 75 ¶ 2.) Amazon Web Services Inc. is an Amazon subsidiary that provides cloud computing infrastructure to numerous small and large private enterprises as well as the United States government and governments of the separate States. VADATA, Inc. is another Amazon subsidiary that operates data centers used by both www.amazon.com and Amazon Web Services. (*Id.* ¶¶ 3-4, 28.)

### B. The Patents-In-Suit

Telebuyer asserts 32 claims from seven related U.S. patents: U.S. Patent Nos. 6,323,894 (“the ’894 Patent”), 7,835,508 (“the ’508 Patent”), 7,835,509 (“the ’509 Patent”), 7,839,984 (“the ’984 Patent”), 8,059,796 (“the ’796 Patent”), 8,098,272 (“the ’272 Patent”), and 8,315,364 (“the ’364 Patent”). (D.I. 174.)<sup>1</sup> The first six patents share the same specification while the ’364 Patent adds new matter not relevant to this motion.<sup>2</sup> All seven patents disclose connecting buyers and sellers to facilitate commerce using known telephones, video cameras, computers and a telephone network.

<sup>1</sup> Claims 1, 34, 48 and 185 of the ’894 Patent; claim 85 of the ’508 Patent; Claims 1, 9, 11, 35, 36, 53, 57, 74, 85 and 88 of the ’509 Patent; claims 157 and 160 of the ’984 Patent; claims 1, 24, 32, 41, 46, 70 and 73 of the ’796 Patent; claims 31 and 47 of the ’272 Patent; and claims 47, 50, 52, 55, 89 and 103 of the ’364 Patent. (D.I. 174.) The ’894 and ’364 Patents are Exhibits 1 and 2, respectively, to the Declaration of Richard G. Frenkel, and the claims of the remaining patents are Exhibits 3-7.

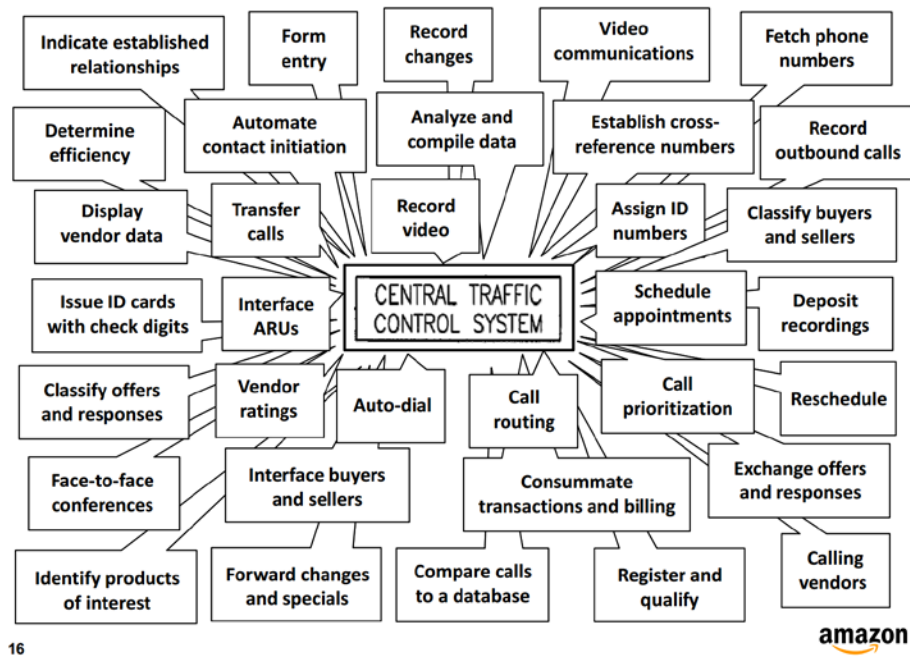
<sup>2</sup> For convenience, all citations to the specifications are to the ’894 Patent.



## 1. The Written Description of the Invention

The written description describes developments in video-conferencing and visual communication technology invented by others. “Technical breakthroughs in audio and video compression technology make desktop video conferencing and visual communication both economical and practical for everyday business communications,” and “innovative technical advances are fast satisfying promises of enhanced capabilities.” (’894 Patent at 2:29-32, 2:24-26.) But those breakthroughs are not the present invention. The present invention is a purportedly novel “traffic control system for providing video communication through a dial-up telephone system, for selectively interfacing members of plural groups, for example, wholesale buyer groups and vendor groups.” (*Id.* at 1:27-31.) This “traffic control system” can be used for “a variety of applications, such as for directing and exchanging offers ... for analyzing and compiling data, scheduling and implementing conferences, consummating sales and the like.” (*Id.* at 1:31-36.) This “traffic control system” can also “expedite traditionally complex purchasing operations.” (*Id.* at 4:21-22.) In all, the “traffic control system” is said to achieve at least 34 different computing results,<sup>3</sup> many of which were presented graphically to the Court in slide 16 of Amazon’s technology tutorial:

<sup>3</sup> The traffic control system is said to perform at least the following functions: “indicate an established relationship” to “isolate a vendor from a plurality of vendors” (’894 Patent at 10:16-19); allow buyers “to access a blank form and enter the specific information” about merchandise (*id.* at 24:35-48); create a record of charges incurred by each buyer or vendor (*id.* at 6:3-10); communicate with color video including motion (*id.* at 4:7-11); fetch vendor telephone numbers (*id.* at 5:33-37); determine a buyer’s efficiency in terms of the amount of time the buyer takes for each of its video call appointments (*id.* at 8:30-44); initiate contact with vendor locations or buyer locations either in a predetermined sequence or randomly (*id.* at 11:25-31); analyze and compile data relating to members (*id.* at 1:31-36, 3:30-37); establish a cross-reference number identifying vendor transactions with buyers (*id.* at 10:24-27); maintain a record of outbound calls by buyers and vendors (*id.* at 8:15-25); display vendor data, such as telephone number or rating (*id.* at 5:38-45); transfer calls from vendors or buyers seeking appointments or the like to a human operator (*id.* at 12:21-29, 18:48-54); record video communications (*id.* at Abstract, 12:53-63); assign identification numbers to vendors (*id.* at 9:49-55); classify buyer and seller calls into types (*id.* at 4:24-28); issue an identification card with a check digit for qualification for each representative of a selling or buying company (*id.* at 17:66-18:3); allow interfacing with audio response units to provide automatic responses for vendors or buyers seeking information or trying to make an appointment (*id.* at 16:9-29, 18:29-47); schedule appointments (*id.* at 1:31-36, 3:30-37); allow vendors and buyers to deposit a video recording of a product being offered by a vendor or desired by a buyer (*id.* at 13:26-29); classifying offers and responses (*id.* at 4:24-28); designate vendor dependability, efficiency at delivering, credit worthiness, and specific buyer



(Amazon Tech. Tutorial, Slide 16.)<sup>4</sup>

Telebuyer elsewhere describes this traffic control system as “groundbreaking” and “revolutionary.”<sup>5</sup> But the Court will search in vain for any groundbreaking or revolutionary hardware that, without highly specialized programming, achieves all of these complex computing results. The Court will search in vain, too, for any specialized programming, system logic, or algorithms that change otherwise generic hardware into anything “groundbreaking” or “revolutionary.” And finally, the Court will search in vain for any argument to the contrary by Telebuyer, at least thus

organizations with which the vendor is registered, in order to come up with a vendor rating (*id.* at 10:11-15); auto-dial vendors via the public telephone system (*id.* at 5:33-37); route telephone calls to the next available operator or another buyer, in the event that all of the communication lines are occupied and there is a considerable backlog of calls (*id.* at 5:56-65); prioritize calls based on criteria (*id.* at 5:66-6:2); reschedule appointments (*id.* at 5:7-12); implement face-to-face conferences in real time between buyers and sellers (*id.* at 1:31-36, 3:30-37); interface buyers and sellers (*id.* at cl. 1); consummate transactions and billing relating to transactions between buyers and sellers (*id.* at 1:31-34, 3:30-36); exchange offers and responses at the wholesale level, between selective members of plural groups (*id.* at 1:31-36, 3:30-37); identify a particular product of interest (*id.* at 19:8-14); forward “[r]ecent changes to appointments or special offerings and proposals” (*id.* at 18:60-63); compare vendor outbound calls with a database of buyers (*id.* at 8:25-28); register and qualify members (*id.* at 4:28-33); and call vendor locations, determined by consulting a database of vendor locations qualified for the particular merchandise for which the buyer requests proposals (*id.* at 8:45-52).

<sup>4</sup> A more comprehensive discussion of the common patent specification is in Amazon’s *Markman* briefs (D.I. 154 at 13-18; D.I. 163 at 8-12), which again are incorporated by reference.

<sup>5</sup> See D.I. 152 at 1 (describing “seven groundbreaking patents”); see also *id.* (stating that the “traffic control system” enables “a number of then revolutionary features”).

far in these proceedings. Telebuyer has been emphatic that its traffic control system is any generic “computer system that receives, processes, stores, and sends information.” (D.I. 152 at 9; *see also* D.I. 161 at 5.) It is, therefore, nothing new. It is instead a “known type of computer system,” one comprised of computing devices having “well-known structural meanings” “used prevalently by contemporaneous patents and technical publications to describe structure” (D.I. 152 at 10, 15-16) such as “interface system[s],” “storage memor[ies],” and “control unit[s]” (*id.* at 6-7, 20-21, 24-25) that are well “understood by ordinarily skilled persons to refer to certain classes of structure” (D.I. 161 at 7). At the same time, Telebuyer has never argued that any of these generic and well-known computing devices inherently achieves, without highly specialized programming, any (much less all) of the 34 computing results achieved by this “groundbreaking” and “revolutionary” traffic control system. Telebuyer’s position at the technology tutorial hearing was consistent. (*See, e.g.*, Tutorial Hr’g Tr. 19:4-7 (“This, again, shows that the term [control computer] was well understood by persons skilled in the art and that further description of ‘control computers’ in the patent was unnecessary.”); *id.* at 19:21-23 (“This shows that the video file server was well understood by persons in the art, skilled in the art, at the time of the invention.”); *id.* at 20:16-18 (“[A]ll of these different types of memory devices were known and understood by persons having ordinary skill in the art.”).)

## 2. The Claims

Representative Claim 1 of the ’894 Patent recites a method of using a “traffic control system” for “directing and exchanging” communications “to accomplish transactions” by (1) “interfacing” buyers and sellers, (2) receiving buyers’ requests for a transaction in an area of interest, (3) receiving identifying information from the buyer, (4) storing data about the buyer’s request, (5) providing the buyer with a video relating to the request, (6) storing billing data about the resulting transaction, and (7) sending a confirmation of the transaction. Representative Claim 1 of the ’509 Patent recites using a “central control” station to “control[] buyer and vendor communication via public data communication links” by (1) “notifying” the buyers of vendor offers, (2) “interfacing” buyers with the station, (3) “receiving ... identification data” from the buyers,

(4) “verifying” that data before providing the buyers with a video presentation about the offer, and (5) “facilitating” email communication with the buyer once a transaction is complete. Representative Claim 157 of the ’984 Patent recites using a “control” unit for (1) “selectively interfacing” vendors with an interested buyer who has used an “electronic device adapted for video communication” to indicate an area of interest, (2) “providing the interested party ... with high resolution video data and text data relating to the area of interest,” and (3) “transferring” the buyer to a vendor’s “live operator relating to the area of interest.” The remaining asserted independent claims are comparable. All recite what amount to only routine and conventional—and even inherent—steps for facilitating face-to-face commerce. (*See* ’894 Patent at cl. 185; ’508 Patent at cl. 85; ’509 Patent at cl. 35, 53, 57, 74, 85; ’796 Patent at cl. 1, 24, 70; ’272 Patent at cl. 31; ’364 Patent at cl. 47; *see also* ’364 Patent at cl. 76 (unasserted independent claim from which asserted claim 89 depends).) None recites any specialized algorithm, specialized hardware, or specialized machine of any kind. To the extent machines are mentioned at all, they are limited to general purpose computing components, such as a “personal computer,” a “storage memory,” a “video memory,” a “remote terminal,” a “processor,” an “interface,” a “public communication system,” or “public data communication links.” (*See, e.g.*, ’894 Patent at cl. 1; ’508 Patent at cl. 85; ’509 Patent at cl. 35; ’984 Patent at cl. 157; ’796 Patent at cl. 1; ’272 Patent at cl. 31; ’364 Patent at cl. 47.)

The dependent claims add nothing relevant to this motion. Some (referred to herein as “Group A Claims”)<sup>6</sup> add the data-gathering step of obtaining buyers’ reactions to offers. (’894 Patent at cl. 48; ’364 Patent at cl. 50, 55). Others (referred to herein as “Group B Claims”) add other routine and conventional devices and functions—such as using a mouse (’894 Patent at cl. 34), using email (’509 Patent at cl. 9), interacting with a live operator “via voice” or “via live video” (’984 Patent at cls. 157, 160), grouping buyers based on areas of interest (’796 Patent at

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<sup>6</sup> Courts routinely analyze claims in groups based on representative claims when they are sufficiently similar for purposes of patent-eligibility under § 101. *See, e.g., Alice*, 134 S. Ct. at 2359-60 (collectively analyzing and holding invalid 208 computer method, system and media claims); *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, --- F.3d ---, 2014 WL 7272219, at \*1-2 (Fed. Cir. Dec. 23, 2014) (same for 242 computer method claims).

cl. 41), categorizing areas of interest ('796 Patent at cl. 46), specifying details about the video communications ('509 Patent at cl. 11, 36, 88; '796 Patent at cl. 32, 73; '272 Patent at cl. 47; '364 Patent at cl. 103), providing limited-time offerings ('364 Patent at cl. 52), and targeting buyers based on past communications ('364 Patent at cl. 89). None meaningfully adds to or limits the independent claims from which they depend. All recite only a different permutation of the fundamental economic practice of connecting buyers and sellers to facilitate commerce using generic computers for their generic functions.

### ARGUMENT

The Court was entirely correct when it observed during the technology tutorial that the rule against owning naked functions, on the one hand, and the rule against owning naked ideas, on the other, overlap. They overlap because each rule protects the public from overlapping harms. The rule against owning naked functions protects the public's right to benefit from future technologies that perform the same functions in better or at least different ways. And the rule against owning naked ideas protects the public's right to use fundamental technical principles and economic practices for all purposes, including for use in real inventions. But when a patent discloses no real invention in the first place, and yet claims to own a fundamental economic practice, that patent violates both rules. Here, Telebuyer's patents violate both rules because they claim to own the fundamental economic practice of connecting buyers and sellers while disclosing no inventive way of doing so.

#### I. THE ASSERTED CLAIMS ARE INVALID FOR VIOLATING THE RULE AGAINST FUNCTIONAL CLAIMING.

For the reasons stated in Amazon's *Markman* briefs, Telebuyer's claims violate the rule against functional claiming, which renders all of them indefinite under 35 U.S.C. § 112 and invalid as a matter of law.<sup>7</sup>

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<sup>7</sup> Amazon respectfully requests a ruling on this ground even if the Court grants summary judgment under 35 U.S.C. § 101. This unusual request is closely tied to the unusual importance of the issue for American technology companies, including small and start-up technology companies, which struggle daily under the crush of vacuous patents that claim to own aspirational computing functions while disclosing no way of achieving them. Amazon, therefore, respectfully seeks to preserve this issue for the highest level of appellate review with the intention of

**II. THE ASSERTED CLAIMS ARE INVALID FOR VIOLATING  
THE RULE AGAINST CLAIMING ABSTRACT IDEAS.**

Section 101 of the Patent Act provides that “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. For more than 150 years, the Supreme Court has construed that statute to exclude laws of nature, physical phenomena, and abstract ideas. *Bilski v. Kappos*, 561 U.S. 593, 601-02 (2010) (“[T]hese exceptions have defined the reach of the statute as a matter of statutory *stare decisis* going back 150 years.”). These fundamental tools of human understanding and experience may never be owned by anyone. They are instead “part of the storehouse of knowledge of all men ... free to all men and reserved exclusively to none.” *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U. S. 127, 130 (1948). “[M]onopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it,’ thereby thwarting the primary object of the patent laws.” *Alice*, 134 S. Ct. at 2354 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1293 (2012)). The Supreme Court has reinforced this rule no fewer than three times in the last five years. *Alice*, *supra*; *Bilski*, *supra*; *Mayo*, *supra*.

Two of those decisions are especially important for this case. The first, *Bilski*, held that § 101’s exception for abstract ideas extends to any “fundamental economic practice long prevalent in our system of commerce.” 561 U.S. at 611 (quotation omitted). The second, *Alice*, reached the same conclusion but also invigorated a related rule, discussed at length by Justice Stevens in *Parker v. Flook*, 437 U.S. 584, 593-95 (1978), that “merely requiring generic computer implementation fails to transform [an] abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2352. Mr. Bilski, therefore, could not own the fundamental economic practice of hedging risk in commodity transactions, *Bilski*, 561 U.S. at 599, 611-12, and Alice Corporation could not own the fundamental economic practice of intermediated financial settlement, even bringing more clarity to this vital area of our patent law.



1 when automated with generic computer equipment, *Alice*, 134 S. Ct. at 2356-57. Since *Bilski*,  
 2 and especially since *Alice*, the Federal Circuit has invalidated a host of patents claiming generic  
 3 computer implementation of otherwise fundamental principles of economics or commerce. *See*  
 4 *infra* at 12-15 (discussing cases).

5 *Alice*'s two-step "framework" controls the analysis. First, courts determine whether pa-  
 6 tent claims are directed to an underlying abstract idea. *Alice*, 134 S. Ct. at 2355. Second, courts  
 7 determine whether the claims "contain[] an 'inventive concept' sufficient to 'transform' the  
 8 claimed abstract idea into a patent-eligible application." *Id.* at 2357 (quoting *Mayo*, 132 S. Ct. at  
 9 1294, 1298). Simply implementing an abstract idea using generic computer components for their  
 10 inherent functions, or limiting an idea to a particular field of use, or adding data-gathering steps,  
 11 or adding any other token post- or extra-solution activity is now plainly insufficient. *Alice*, 134  
 12 S. Ct. at 2357-59. Applying this two-step approach, "it is a straightforward matter to conclude  
 13 that the claims in this case are invalid." *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355  
 14 (Fed. Cir. 2014).

#### 15 **A. The Asserted Claims Are Directed To An Abstract Idea.**

16 Telebuyer's claims undeniably implicate a fundamental economic practice long prevalent  
 17 in our system of commerce—namely, connecting buyers and sellers and facilitating face-to-face  
 18 commerce. For example, the asserted independent method and system claims recite "directing,"  
 19 "exchanging," "enabling," "facilitating," "control[ling]," or "accomplishing" communications  
 20 between buyers and sellers ('894 Patent at cl. 1, 185; '508 Patent at cl. 85; '509 Patent at cl. 1,  
 21 35, 53, 57, 74, 85; '984 Patent at cl. 157; '796 Patent at cl. 1, 24, 70; '272 Patent at cl. 31; '364  
 22 Patent at cl. 47) "to accomplish transactions [relating to] merchandise or [a service] available for  
 23 purchase" ('894 Patent at cl. 1; '509 Patent at cl. 35, 53, 57, 74; '364 Patent at cl. 47), "for the  
 24 possible consummation of transactions" ('796 Patent at claim 24), or otherwise to facilitate  
 25 commercial offers or transactions ('894 Patent at cl. 185; '508 Patent at cl. 85; '509 Patent at cl.  
 26 1, 85; '984 Patent at cl. 157; '796 Patent at cl. 1, 70; '272 Patent at cl. 31; *see also* '364 Patent at  
 27 cl. 76 (unasserted independent claim from which asserted claim 89 depends).)

1 Face-to-face commerce is, of course, as old as humanity itself. And it is a practice no  
 2 less abstract than the fundamental economic practices recently found patent-ineligible by the Su-  
 3 preme Court and Federal Circuit. There is simply “no meaningful distinction,” *Alice*, 134 S. Ct.  
 4 at 2356-57, between using computers (Telebuyer’s “traffic control system”) as an intermediary  
 5 to facilitate commerce *generally*, on the one hand, and using computers as an intermediary to  
 6 facilitate *particular* financial settlements, as in *Alice*. Nor is there any meaningful distinction  
 7 between Telebuyer’s claims and the advertising and media distribution claims in *Ultramercial*,  
 8 *Inc. v. Hulu, LLC*, 772 F.3d 709, 714-15 (Fed. Cir. 2014), or the information management claims  
 9 in *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1333-34 (Fed. Cir. 2012), or the Internet transac-  
 10 tion verification claims in *buySAFE*, 765 F.3d at 1351, or the organization management claims in  
 11 *Accenture Global Services, GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1346 (Fed. Cir.  
 12 2013), or the life insurance management claims in *Bancorp Services, L.L.C. v. Sun Life Assur-*  
 13 *ance Co. of Canada*, 687 F.3d 1266, 1280-81 (Fed. Cir. 2012), or the real estate investment  
 14 claims in *Fort Properties, Inc. v. American Master Lease LLC*, 671 F.3d 1317, 1322-23 (Fed.  
 15 Cir. 2012), or the Internet security claims in *CyberSource Corp. v. Retail Decisions, Inc.*, 654  
 16 F.3d 1366, 1374-76 (Fed. Cir. 2011). *See also Content Extraction*, 2014 WL 7272219, at \*3  
 17 (finding abstract claims directed to “[t]he concept of data collection, recognition, and storage”).

18 To be sure, Telebuyer’s claims struggle to disguise their abstract nature by subdividing  
 19 and deconstructing ordinary commerce into numerous disaggregated and constituent parts. But  
 20 so did the claims in *Alice*, which subdivided the idea of intermediated settlement into  
 21 (1) “creating” shadow records for each counterparty to a transaction, (2) “obtaining” the parties’  
 22 start-of-day balances, (3) “adjusting” the shadow records as transactions occur, and (4) issuing  
 23 end-of-day instructions to complete the transactions for which there are sufficient funds. 134 S.  
 24 Ct. at 2359. So did the claims in *Bilski*, which subdivided the idea of commodity hedging into  
 25 (1) initiating a series of financial transactions at a fixed rate based on historical averages, where  
 26 the fixed rate corresponds to a risk position of buyers, (2) identifying sellers having a counter-  
 27 risk position to those buyers, and (3) initiating a series of financial transactions between buyers



1 and sellers to balance the risk. 561 U.S. at 599. So did the claims in *Dealertrack*, which subdivided the idea of an information clearinghouse into (1) “receiving data from one source,” (2) “selectively forwarding the data,” and (3) “forwarding reply data to the first source.” 674 F.3d at 1333. And finally, so did the claims in *Ultramercial*, which subdivided the idea to use Internet advertisements as currency into no fewer than 11 parts and subparts, including (1) selecting an advertisement, (2) offering media to the consumer in exchange for watching or interacting with the ad, (3) receiving a request to view the ad, (4) facilitating display of the ad, (5) allowing the consumer access to the media, (6) updating an activity log, and (7) receiving payment from the ad’s sponsor. 772 F.3d at 714-15. In each case, the Supreme Court and Federal Circuit rejected these contrivances of the “‘draftsman’s art’” and held that all of these claims, despite being subdivided into numerous parts and subparts, were at bottom “methods of organizing human activity,” *Alice*, 134 S. Ct. at 2359 (citation omitted), 2356, and thus required further analysis under *Alice*’s step two—an analysis none would survive.

14 The same is true for Telebuyer’s claims. Just as in *Alice*, *Bilski*, *Dealertrack*, and *Ultramercial*, Telebuyer’s claims are plainly directed to methods of organizing human activity—connecting buyers and sellers to facilitate commerce—notwithstanding the numerous parts and subparts into which those methods have been subdivided. The only question, therefore, is whether Telebuyer’s claims add some “‘inventive concept’—*i.e.*, an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.” *Alice*, 134 S. Ct. at 2355 (citation omitted). They do not.

## 22 **B. The Asserted Claims Add Nothing Inventive** 23 **To The Abstract Idea.**

24 Telebuyer’s claims fail *Alice*’s second step, too, because they add only generic computer functions and equipment, together with other conventional elements, which are entitled to no inventive weight as a matter of law.

**1. Reciting Use Of Generic Computer Components  
Adds Nothing Inventive.**

Telebuyer's computer elements are entitled to no inventive weight. Those elements re-cite nothing more than generic computer components—such as a “personal computer,” a “storage memory,” a “video memory,” a “remote terminal,” a “processor,” an “interface,” a “public communication system,” or “public data communication links” (*e.g.*, '894 Patent at cl. 1; '508 Patent at cl. 85; '509 Patent at cl. 35; '984 Patent at cl. 157; '796 Patent at cl. 1; '272 Patent at cl. 31; '364 Patent at cl. 47)—used for their generic functions—such as “receiving ... data,” “storing ... data,” “obtain[ing] ... data,” “electronically transmitting” data, and “displaying ... data” (*e.g.*, '894 Patent at cl. 1). These generic, well-understood, and routine computing devices used for generic, well-understood, and routine computing functions are simply irrelevant. As a matter of common sense, the hard work of true invention demands much more. As a matter of law, so does § 101.

The Supreme Court in *Alice*, for example, explained that storing data in a database is not inventive because it is “one of the most basic functions of a computer,” and that “[t]he same is true with respect to the use of a computer to obtain data,” “track multiple transactions,” “adjust account balances,” and “issue automated instructions” “simultaneously.” 134 S. Ct. at 2359. “[A]ll of these computer functions,” the Court observed, “are ‘well-understood, routine, conventional activit[ies]’ previously known to the industry,” and are therefore entitled to no inventive weight under § 101. *Id.* (second alteration in original) (quoting *Mayo*, 132 S. Ct. at 1294). The Court observed further that reciting generic computing components such as “a ‘data processing system’ with a ‘communications controller’ and a ‘data storage unit’” provides no “meaningful limitation beyond generally linking the use of the method to a particular technological environment.” *Alice*, 132 S. Ct. at 2360 (internal brackets, quotation marks, and citations omitted). The Federal Circuit, too, in *Ultramercial* and *buySAFE*, accorded no weight to claim elements that recited transmission of data over a network because the “transfer of content between computers is merely what computers do,” *Ultramercial*, 772 F.3d at 717, and because “receiv[ing] and

1 send[ing] ... information ... is not even arguably inventive,” *buySAFE*, 765 F.3d at 1355. And  
 2 in *Bancorp*, the Federal Circuit accorded no weight to elements that recited a “generator,” a “cal-  
 3 culator,” and a “digital storage” unit because such generic, well-understood, and routine compu-  
 4 ting devices cannot “salvage an otherwise patent-ineligible process.” 687 F.3d at 1274, 1278.

5 The rule makes perfect sense. The naked insight to automate pre-computer-era (to say  
 6 nothing of ancient) human activities, or perform them more efficiently, using generic computers  
 7 for their generic, well-understood, and routine functions cannot possibly be inventive. That in-  
 8 sight adds nothing—much less something “significantly more”—to a basic idea, and is thus no  
 9 different than owning the idea itself. As the Federal Circuit explained in *Bancorp*, the obvious  
 10 fact that a computer, programmed in some unspecified way, is able to perform some ancient hu-  
 11 man task ““more quickly”” makes no difference because the “use of a computer in an otherwise  
 12 patent-ineligible process for no more than its most basic function—making calculations or com-  
 13 putations—fails to circumvent the prohibition against patenting abstract ideas and mental pro-  
 14 cesses.” *Id.* at 1278 (citation omitted). The rule has been applied to a host of generic, well-  
 15 understood, and routine computing functions. *See, e.g., Accenture*, 728 F.3d at 1338 (automati-  
 16 cally “transmit[ing]” and “receiv[ing]” data and generating tasks); *Dealertrack*, 674 F.3d at  
 17 1333 (automatically and selectively forwarding information and forwarding reply data); *Fort*  
 18 *Props.*, 671 F.3d at 1322-24 (automatically generating deedshares); *CyberSource*, 654 F.3d at  
 19 1373-74 (automatically matching new credit card transactions against past transactions using  
 20 common Internet addresses); *see also Ultramercial*, 772 F.3d at 717 (“adding a computer [or the  
 21 Internet] to otherwise conventional steps does not make an invention patent-eligible.”). Indeed,  
 22 even in the sole post-*Alice* decision where a Federal Circuit panel (albeit a deeply divided one)  
 23 rejected a § 101 challenge, the majority was emphatic that there is nothing inventive about “ap-  
 24 plying a known business process to the particular technological environment of the Internet,” or  
 25 in “creating or altering contractual relations using generic computer functions and conventional  
 26 network operations,” or in “merely recit[ing] the performance of some business practice known  
 27 from the pre-Internet world along with the requirement to perform it on the Internet.” *DDR*

1 *Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259, 1264 (Fed. Cir. 2014).<sup>8</sup>

2 **2. Redrafting Process Claims As “System”**  
 3 **Claims Adds Nothing Inventive.**

4 It makes no difference that some of the claims are drafted as “systems” instead of pro-  
 5 cesses. (*E.g.*, ’508 Patent at cl. 85; ’796 at cl. 1.) Redrafting a “process” claim as a “system”  
 6 claim will not circumvent the rule, just as it did not circumvent the rule in *Alice*, *Accenture*, *Ban-*  
 7 *corp*, and *CyberSource*. These artificial and fictional claims, where some unidentified “system”  
 8 simply performs the steps of the claimed process, are mere contrivances of the “draftsman’s art”  
 9 on which the important question of patent eligibility cannot possibly depend. As the Supreme  
 10 Court held in *Alice*, for example, “the system claims are no different from the method claims in  
 11 substance” because “the system claims recite a handful of generic computer components config-  
 12 ured to implement the same idea” as the method claims and “[t]his Court has long ‘warn[ed] ...  
 13 against’ interpreting § 101 ‘in ways that make patent eligibility depend simply on the drafts-  
 14 man’s art.’” 134 S. Ct. at 2360 (citation omitted).

15 **3. The Absence Of Specialized Programming**  
 16 **Or Algorithms Is Consistent.**

17 Telebuyer’s patents (not just the claims) are devoid of any specialized software, system

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19 <sup>8</sup> Telebuyer’s claims could, of course, be performed even without a computer. A person  
 20 acting as an intermediary (such as a broker) could perform the basic claim steps “by human  
 21 thought alone”—or at least with a pen and paper—by keeping a list of buyers’ and sellers’ areas  
 22 of interest and past commercial activities, and based on that data provide targeted visual  
 23 communications relating to the product offerings. *See CyberSource*, 654 F.3d at 1373. In fact,  
 24 some claims expressly rely on a “live operator” to assist in facilitating the transactions. (*See*,  
 25 *e.g.*, ’984 Patent at cl. 157; ’364 Patent at cls. 76, 89.) This fact conclusively establishes that the  
 26 claims fundamentally do not require a computer in the first place, and thus the references to  
 27 computers do not meaningfully limit the claims. *See CyberSource*, 654 F.3d at 1373. Again, the  
 Supreme Court and Federal Circuit have consistently held that using computers to do ““more  
 quickly”” tasks that could otherwise be performed by humans (albeit slowly or with more effort)  
 is not enough. *Bancorp*, 687 F.3d at 1278 (citation omitted); *see also Alice*, 134 S. Ct. at 2359  
 (claims ineligible despite requiring ““simultaneous[ly]” sent instructions, which could not be  
 done absent computer (citation omitted)); *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)  
 (computer-implemented claims not eligible where functions can also be performed “mentally”  
 “without a computer”).

logic, or programming algorithms that could provide the missing “inventive” elements. Just as in *Ultramercial*, *buySAFE*, *Bancorp*, and *Dealertrack*, Telebuyer’s patents “do[] not specify how the computer hardware and database are specially programmed to perform the steps claimed.” *Dealertrack*, 674 F.3d at 1333 (citation omitted). Telebuyer’s claims are drafted in purely functional language that expresses the naked aspiration to use conventional video-telephones, dial-up telephone lines, and computer hardware to facilitate face-to-face commercial communications, relying instead on the public to create—*i.e.*, invent—the necessary algorithms and other specialized programming to achieve Telebuyer’s “groundbreaking” and “revolutionary” results. There are, of course, numerous ways to do so, including the ways actually invented by the extraordinary efforts of thousands of engineers working hard at America’s most innovative technology companies, both big and small. Those are real inventions. Telebuyer’s vacuous patents are not.

#### 4. The Miscellany Of Other Gratuitous Limitations Are Not Inventive.

Nor are the other limitations remotely inventive. It makes no difference, for example, that each of Telebuyer’s claims recites using visual communications—“dynamic” video, “high resolution freeze frame data,” or otherwise (*e.g.*, ’894 Patent at cl. 185)—just as it was not enough to limit the abstract hedging principle in *Bilski* to the energy markets (561 U.S. at 612), or to limit the abstract clearinghouse concept in *Dealertrack* to facilitating auto loan applications (674 F.3d at 1334). As the Federal Circuit explained in *Dealertrack*, “[t]he notion of using a clearinghouse generally and using a clearinghouse specifically to apply for car loans, like the relationship between hedging and hedging in the energy market in [*Bilski*], is of no consequence without more.” *Id.* Those cases would not have been decided differently if the claims were limited to using *visual communications* to facilitate hedging transactions or auto loans, respectively. And the same would have been true for the intermediated settlement method found wanting in *Alice*. Visual communication capability is, therefore, nothing more than a technological field of use limitation that “is of no consequence.” *Id.* See also *Accenture*, 728 F.3d at 1339 (claims ineligible despite requiring that the “client component displays the determined task”); *Planet Bin-*

1 *go, LLC v. VKGS, LLC*, 961 F. Supp. 2d 840, 856 (W.D. Mich. 2013) (dependent claims specify-  
 2 ing that “input and output terminal includes a video screen” are not meaningfully different),  
 3 *aff’d*, 576 F. App’x 1005, 1007 (Fed. Cir. 2014) (“we agree with the district court that there is no  
 4 meaningful distinction between the method and system claims or between the independent and  
 5 dependent claims”).

6 Nor does it matter that the claims recite collecting and providing various data, such as  
 7 billing data, video data, data about areas of interest, or transaction data (*see, e.g.*, ’894 Patent at  
 8 cl. 1, 185; ’509 Patent at cl. 35) because mere “data-gathering” steps have never been sufficient  
 9 to confer patent-eligibility. As the Federal Circuit explained in *Ulramercial*, “the steps of con-  
 10 sulting and updating an activity log represent insignificant ‘data-gathering steps,’ and thus add  
 11 nothing of practical significance to the underlying abstract idea.” 772 F.3d at 716 (internal cita-  
 12 tion omitted). And as the Federal Circuit explained in *CyberSource*, “mere ‘data-gathering  
 13 steps’” to collect information about consumers’ prior credit card usage to assess whether subse-  
 14 quent transactions are valid did not make the claims patent eligible.” 654 F.3d at 1370 (brackets  
 15 and citation omitted); *see also Mayo*, 132 S. Ct. at 1298.

16 And finally, gratuitous steps like receiving video from vendors (’508 Patent at cl. 85);  
 17 connecting buyers and sellers based on areas of interest, conveying offers, and facilitating post-  
 18 transaction communications (*e.g.*, ’509 Patent at cl. 1); assigning priority designations or ratings  
 19 to vendors (’509 Patent at cl. 74, 85; ’364 Patent at cl. 47); using live operators to facilitate  
 20 transactions (’984 Patent at cl. 157); or providing limited-time offers (’796 Patent at cl. 70) are  
 21 all conventional or pre-computer-era (if not ancient) activities used by anyone facilitating com-  
 22 mercial communications. None is inventive. *See, e.g., Alice*, 134 S. Ct. at 2357-59; *Mayo*, 132  
 23 S. Ct. at 1294, 1298-1300.

## 24 **5. The Dependent Claims Add Nothing Inventive.**

25 Likewise, none of the 15 asserted dependent claims makes a difference. At most, they  
 26 add only more extra-solution activity, field of use limitations, and conventional computing func-  
 27 tionality—which does not meaningfully confine the abstract commerce-facilitation concept, and

1 therefore does not render the claims patent eligible. Some dependent claims—the Group A  
 2 claims—simply add a step for collecting buyers’ reactions to offers (*see supra* at 8), which is an  
 3 other data-gathering step that does not confer patent-eligibility. *See Ultramercial*, 772 F.3d at  
 4 716. The rest of the dependent claims—the Group B Claims—simply add other basic computer  
 5 features (such as using a mouse or email), extra-solution activity, or conventional steps (such as  
 6 providing limited-time offerings and targeting buyers based on past behavior). (*See supra* at 8-  
 7 9.) Such routine and insignificant additions do not remotely satisfy § 101. *See Alice*, 134 S. Ct.  
 8 at 2359-60; *Content Extraction*, 2014 WL 7272219, at \*4; *Ultramercial*, 772 F.3d at 715-16.

# 9 10 **6. The Claims Fail The “Machine-Or-Transformation” Test.**

11 Not surprisingly, Telebuyer’s claims also fail the “machine-or-transformation test,”  
 12 which, although not the “sole test,” has been described by the Supreme Court as a “useful clue”  
 13 to patent-eligibility. *Bilski*, 561 U.S. at 603; *Ultramercial*, 772 F.3d at 716. Telebuyer’s claims  
 14 are not tied to any “particular machine.” *Ultramercial*, 772 F.3d at 716-17. Telebuyer’s claims  
 15 are tied solely to generic computers, which are not “particular machines” without specialized  
 16 programming. (*Supra* at 14-17.) Although specialized programming could potentially transform  
 17 generic computers into something “particular,” once again, there is no such specialized pro-  
 18 gramming here. As for the “transformation of a particular article into a different state or thing,”  
 19 *CyberSource*, 654 F.3d at 1369 (quotation and citation omitted), even Telebuyer will not try to  
 20 argue that. Even complex “manipulations of ‘public or private legal obligations or relationships,  
 21 business risks, or other such abstractions cannot meet the [transformation] test because they are  
 22 not physical objects or substances, and they are not representative of physical objects or sub-  
 23 stances.’” *Ultramercial*, 772 F.3d at 717 (quotation omitted). That Telebuyer’s claims fail the  
 24 machine-or-transformation test is itself compelling evidence that they are invalid under § 101 as  
 25 a matter of law.



## CONCLUSION

Monopolies that remove vast swaths of human activity from the People without any contribution to the public weal antedate the birth of our Republic, when the Crown bestowed on favored subjects the exclusive right to conduct some of the most basic aspects of colonial commerce. Our Founders famously chafed against such abuses, which is why they expressly conditioned Congress's power to grant monopolies on whether they serve an express public purpose—the promotion of science and the useful arts. Indeed, so bitter was the taste of monopolies abused by the Crown, that even as late as 1813, Thomas Jefferson, author of the 1793 patent act and prominent inventor in his own right, could caution that only significant contributions to the public store of knowledge are worth the “public embarrassment” of a patent. *Graham v. John Deere Co.*, 383 U.S. 1, 8-10 & n.2 (1966) (discussing Jefferson correspondence).<sup>9</sup>

The Telebuyer patents are extreme examples of how far our patent system can drift from its Constitutional moorings. Those patents, which contribute nothing to the advancement of science or the useful arts, claim to own some of the most basic aspects of American commerce, however achieved, including by some of the most advanced and innovative technologies the world has known. Nothing in our nation's patent system, especially as enshrined in our Constitution, should permit such a perverse result.

For the foregoing reasons, Amazon respectfully requests that the Court grant its Motion for Summary Judgment of Invalidity under 35 U.S.C. §§ 112 and 101.

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<sup>9</sup> See also *Motion Picture Co. v. Universal Film Co.*, 243 U.S. 502, 510-11 (1917) (“Since *Pennock v. Dialogue*, 2 Pet. 1, was decided in 1829 this court has consistently held that the primary purpose of our patent laws is not the creation of private fortunes for the owners of patents but is ‘to promote the progress of science and useful arts’ (Constitution, Art. I, § 8), an object and purpose authoritatively expressed by Mr. Justice Story, in that decision, saying, ‘While one great object [of our patent laws] was, by holding out a reasonable reward to inventors, and giving them an exclusive right to their inventions for a limited period, to stimulate the efforts of genius; the main object was to promote the progress of science and useful arts.’ . . . Thirty years later this court, returning to the subject, in *Kendall v. Winsor*, 21 How. 322, again pointedly and significantly says: ‘It is undeniably true, that the limited and temporary monopoly granted to inventors was never designed for their exclusive profit or advantage; the benefit to the public or community at large was another and doubtless the primary object in granting and securing that monopoly.’”).



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**CERTIFICATE OF SERVICE**

I, Richard G. Frenkel, hereby certify that on February 17, 2015, I caused the foregoing **MOTION FOR SUMMARY JUDGMENT OF INVALIDITY** to be served on the following parties as indicated below:

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